Supreme Court, U.S.
FILED
JAN 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

85-1467
NO.

IN THE SUPREME COURT OF THE UNITED STATES

STEWART S. HOFFMAN

Petitioner,

-vs-

DAVIDOFF EXTENSION, S.A.

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

STEWART S. HOFFMAN
PRO SE.
P.O. Box 25222
Tamarac, Florida 33321
1-305-722-1096
Representing the Petitioner

38/17

QUESTION PRESENTED FOR REVIEW

Does The Respondent have the legal right in The United States to trade its tobacco products and obtain, as well as, maintain a United States trademark under the following Federal Laws:

(1) UNDER SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE.

Did The Respondent falsify their application to The United States Patent and Trademark Office.

(2) UNDER SECTION 27573 OF TITLE 26 OF THE FEDERAL REGULATIONS.

Has The Respondent falsified a document title "RESPONSE" dated June 15, 1976, to The United States Patent and Trademark Office, by stating THAT ALL DAVIDOFF PRODUCTS SOLD IN THE UNITED STATES ARE IN AGREEMENT WITH ALL FEDERAL REGULATIONS CONCERNING THE SALE OF TOBACCO PRODUCTS.

(3) UNDER SECTION 51501 OF THE OFFICE OF FOREIGN ASSISTANCE CONTROL REGULATIONS.

Is the merchandise that has been, and is now being imported into The United States, by The Respondent distributor in Violation of The United States Embargo Law of 1962.

(4) UNDER SECTION 18 U.S.C. 1341 MAIL FRAUD.

Has The Respondent used The United States Postal Service in the past, as well as, today for Fraudulent Purposes.

(5) UNDER TRADE CUBAN ASSETS CONTROL REGULATIONS 31 CFR PART 515.

Why hasn't The Respondent registered with The United States Government as AGENTS of The Cuban Communist Government, since they are a subsidiary company of Empresa Cuban Del Tobacco (CUBATOBCO) controlled by The Cuban Communist Government.

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THIS PETITION PROVIDES THIS COURT AN OPPORTUNITY TO CLARIFY THIS UNPRECEDENTED CASE AND FOR REVERSE DECISION BASED ON THE FACTS THAT THERE ARE QUESTIONS OF EXCEPTIONAL IMPORTANCE OF FEDERAL VIOLATIONS OF THE LAW THAT RELATE TO THIS CASE AND HOW THE RESPONDENT OBTAINED THEIR ILLEGAL UNITED STATES REGISTERED TRADEMARKS, WHICH HAS NOT BEEN ANSWERED, BUT SHOULD BE AND SETTLED BY THIS COURT.

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Appendix A - Opinion of the United States Court of Appeals Eleventh Circuit

Appendix B - Petition for ReHearing

Appendix C - The United States Court of Appeals. Denial

Appendix D - Copy of Affidavit made by Dr. Ernest Schneider of Davidoff Extension, S.A. In The High Court of The Republic of Singapore

Appendix E - A copy of letter from Mr. Carolos A. Montalvan Mora Legal Director of Empresa Cuban Del Tobacco

Appendix F - A recent Newspaper Article from the New York Post - dated November 20, 1985. Title "PUFF-PUFF"

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PRAYER

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

May It Please the Court:

The Petitioner, Davidoff International, Inc., U.S.A. respectfully prays that a writ of certiorari issue to review the judgment of the District Court for the Southern District of Florida and the Court of Appeals, Eleventh Circuit.

OPINION BELOW

The opinion of The Court of Appeals Eleventh Circuit, by order of that Court, was not to be published. A copy of the opinion is attached (See Appendix A).

Furthermore, The Petitioner field with The Court of Appeals Eleventh Circuit, its Petition for Rehearing (See Appendix B). And the Court of Appeals Eleventh Circuit denial (See Appendix C).

JURISDICTION

The final order of the Court of Appeals Eleventh Circuit denying review was entered on October 31, 1985. This Petition is filed within 90 days of the entry of Judgment in the civil case.

STATEMENT OF CASE

Since this complaint was filed by the Respondent for Trademark Infringement and the fact that the Respondent never produced records to the Court nor products to support their trademark applciation in claiming first use of the trademark name "DAVIDOFF" in the United States.

Under United States trademark law, the Applicant must show that shipments have been made in the United States Commerce for those years.

The Petitioner requested, time after time, those docuemnts, through the Court, and their so-called tobacco products that were used in commerce for the year of 1965 through 1982, for inspection by the Petitioner and the Lower Court, but they never materialized.

The Respondent claimed there was a fire. However, this so-called fire occurred at the Respondent's Main tobacco shop in

Geneva and not at their office in Basle, nor their attorney's office in Zurich, Switzerland.

The true issue in this case has been whether The Respondent legally obtained, as well as, can own the trademark name "DAVIDOFF" and be allowed to trade its tobacco products in the United States since there has been so many violations.

The Lower Courts should have CANCELLED the Respondent trademarks and removed all of the Respondent tobacco products from the shelves of those tobacco retail accounts that belong to the Respondent distributor.

Based on the Petitioners facts and findings that were presented to the Lower Courts, clearly proved that the Respondent has Violated the Laws of the United States Government, under the following Docket Numbers:

DOCKET NO. 62. DATED AUGUST 22, 1984

Motion to Dissolve the Preliminary Injunction And For An Order to Show Cause Why The Complaint Should Not Be Dismissed.

DOCKET NO. 78 DATED NOVEMBER 19, 1984

Under the Defendant's Final Discovery, with the following items:

(1) A box of 25's Cigars Zino Davidoff Mounton-Cadet No. 3.

(2) A Box of 10's Cigars Davidof Demi-Tasse

(3) A Box of 20's Cigars Davidoff Cigarillos

(4) A Box of 25's Cigars Davidoff No. 2 Havanas

We request these Documents and Exhibit Items that are at the United States District Court for Southern District of Flordia be sent to The Supreme Court because, we deemed it essential for a proper understanding of this UNPRECEDENTED CASE.

REASON FOR GRANTING THE WRIT

THIS PETITION PROVIDES THIS COURT AN OPPORTUNITY TO CLARIFY THIS UNPRECEDENTED CASE AND FOR REVERSE DECISION BASED ON THE FACTS THAT THERE ARE QUESTIONS OF EXCEPTIONAL IMPORTANCE OF FEDERAL VIOLATIONS OF THE LAW THAT RELATE TO THIS CASE AND HOW THE RESPODNENT OBTAINED THEIR ILLEGAL UNITED STATES REGISTERED TRADEMARKS, WHICH HAS NOT BEEN ANSWERED, BUT SHOULD BE AND SETTLED BY THIS COURT.

The Lower Courts overlooked all of the evidence that was presented by the Petitioner.

At no time during this case did any of the Respondent witnesses have any knowledge regarding the Respondent's association with The Cuban Tobacco Company, other than them making cigars for the Respodnent, nor did they know the contents of those tobacco products that were sent into the United States, at that time and the present.

They could not even offer information as to where those tobacco products were shipped, in the United States.

Nor, did they know, who other than the Cuban Tobacco Company manufactured the products.

The Respondent, never produced their two (2) chief witnesses who have true knowledge of the original application for the United States trademarks. They are Mr. Zino Davidoff and Dr. Ernest Schneider.

In a sworn affidavit, made by Dr. Ernest Schneider of Davidoff Extension, S.A., stating In the High Court of the Republic of Singapore, on May 5, 1983 that the group of companies comprising CUBATABCO, Davidoff Extension, S.A., Zino Davidoff S.A. and Davidoff & Company are INTERALIA.

Dr. Schneider also states that ALL Davidoff cigars are manufactured in CUBA and of Havana tobacco. The production place is the State Owned Enterprise CUBATABCO in Cuba. (See Appendix D).

Furthermore, a copy of letter from one Mr. Carlos A. Montalvan Mora, Legal Director of Empresa Cuban Del Tobacco, (with Cuban Seal of CUBATABCO) dated February 25, 1982 - HAVANA, granting Full Powers to one Dr. Ernest Schneider, Director of Davidoff Extension, S.A., Zurich, Switzerland, to defend the rights belonging to CUBATABCO with respect to the trademark name "DAVIDOFF". (See Appendix E.)

A recent newspaper article in The New York Post, dated November 20, 1985, title "PUFF PUFF". The Store Manager, Bernard Koymans stated that Davidoff Salesmen are offering American visitors to replace the identifying bands in order to ship the cigars to the United States.

This is the same person that sent to the Petitioner, through the United States Postal Service, one brown parcel labelled "UNSOLICITED GIFT", Dutch cigars from the Davidoff Main Store. Inside the parcel was

one (1) box of 25's Davidoff No. 2 Havana cigars that were used for Chemical Anaylsis. (See Appendix F.)

CONCLUSION

If, the United States is a Nation of Laws, How is it possible for a foreign company, that is controlled by The Cuban Communist Government, be allowed to trade its goods and be awarded a United States trademark.

The Respondent cannot legally own the (2) two United States registered trademarks in the name "DAVIDOFF", they should be CANCELLED.

Wherefore, the Petitioner respectfully requests that a WRit of Certiorari be issued to the United States District Southern District of Florida and The United States Court of Appeals Eleventh Circuit.

Respectfully submitted,

Stewart S. Hoffman
Pro Se

P.O. Box 25222
Tamarac, Florida 33321
1-(305) 722-1096

APPENDIX A

DO NOT
PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-5022

Non-Argument Calendar

DAVIDOFF EXTENSION, S.A.
a Swiss corporation,
Plaintiff-Appellee,

versus

DAVIDOFF INTERNATIONAL, INC.,
U.S.A., a Florida corporation,
and Stewart S. Hoffman,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Florida

(September 27, 1985)

Before TJOFLAT, VANCE and KRAVITCH, Circuit Judges.

PER CURIAM;

In this case involving infringement of registered trademarks, the district judge, following a bench trial, entered judgment for the plaintiff. After reviewing the record, we conclude that the findings of fact of the trial court are not clearly erroneous, and that the law was correctly applied. Accordingly, we AFFIRM.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR ELEVENTH CIRCUIT COURT

DAVIDOFF EXTENSION, S.A.
a Swiss corporation

APPELLEE, No. 85-5022.

-vs-

DAVIDOFF INTERNATIONAL, INC.
a Florida corporation

APPELLANTS.

PETITION FOR REHEARING

On behalf of the Appellants, and upon the representation of Stewart S. Hoffman for the Appellants, in accordance with FRAP rule 26 of the Appellants files with The Clerk of the United States Court of Appeals For Eleventh Circuit Court of Atlanta, Georgia this Petition For Rehearing.

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more question of exceptional importance:

1. The Appellee has Falsified their application to The United States Patent and Trademark Ottice.
2. The Appellees (2) two Registered Trademarks are now under investigation by The United States Patent and Trademark Office.
3. The Appellee is not incorporated in The United States.
4. The Appellee has Violated The United States Embargo Law of 1962.
5. The Appellee has used The United States Postal Service for Fraudulent Purposes.
6. The Appellee never paid United States Import Tax as required by law.
7. The Appellee has not registered with The United States Government as AGENTS of The Cuban Communist Government.

Therefore, pending the cancellation of The Appellee (2) registered trademarks by The United States Patent and Trademark Office and the fact The Appellee is not incorporated in The United States, and under any one of the Above Violations that was submitted by The Appellant brief for Reverse Decision should grant this Petition For ReHearing on the grounds of this unprecedented case of infringement of Appellants corporate name DAVIDOFF in The United States.

Respectfully Submitted

Stewart S. Hoffman
Representing The Appellants
Davidoff International, Inc.
U.S.A. P.O. Box 25222
Tamarac, Florida 33321
1-305-722-1096

Dated: October 10, 1985
Tamarac, Florida

I, hereby certify that I have submitted true and correct copies of this Petition For ReHearing and ws mailed to:

Appellee Attorney Mr. Jack E. Dominik, Esq.
Jack E. Dominik, P.A.
Miami Lake Corporate Plaza
6175 N.W. 153rd Street
Miami, Florida 33014

This 10th day October 1985.

Notary: Selma Freidman
Notary Public, State of Florida
My Commission Expires May 2, 1988.

Seal.

APPENDEX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 85-5022 Seal.

DAVIDOFF EXTENSION, S.A.
a Swiss Corporation,
Plaintiff-Appellee,

versus

DAVIDOFF INTERNATIONAL, INC.,
U.S.A., a Florida Corporation,
and Stewart S. Hoffman.
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION (S) FOR REHEARING

(October 31, 1985)

BEFORE: TJOFLAT, VANCE & KRAVUTCH, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by DAVIDOFF INTERNATIONAL, INC., and STEWART S. HOFFMAN, is Denied.

ENTERED FOR THE COURT:

Phyllis Kravitch
United States Circuit Judge

APPENDIX D

Seal. Stamp. Seal.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Motion)
No. 2 of 1983) Seal.

Between

In the Matter of Section 39 of the Trade Marks Act, Cap 106

and

In the Matter of Registered Trade Mark No. 77412 registered in the name of DAVIDOFF COMMERCIO E INDUSTRIA LTDA in Class 34

Seal.

Between

Davidoff Extension S.A.
... Applicants
And

Davidoff Commercio E Industria Ltda

... Respondents

AFFIDAVIT

I. Dr. Ernest Schneider of Basle, Switzerland

1. I am the Chairman of the Board of Directors of M/S DAVIDOFF EXTENSION S.A. of Switzerland, Alpenstrasse 14, 6300 Zug and I am authorized to make this Affidavit on their behalf.

2. The world famous DAVIDOFF cigars and other smoking accessories are produced by a group of companies (hereinafter called "the Davidoff-Group") comprising, CUBATABACO, DAVIDOFF

EXTENSION, S.A., ZINO DAVIDOFF S-A and DAVIDOFF and Company.

3. The Davidoff-Group are the legitimate owners of the trademark "DAVIDOFF" which is used on high quality cigars and a variety of smoking accessores.

c. All DAVIDOFF cigars are manufactured in Cuba and out of HAVANA TOBACCO. The production place is the Davidoff factory which belongs to The State Owned Enterprise CUBATABACO in Cuba.

I humbly pray for an order in terms of this application.

Schneider

SWORN on this 5th day) Stamp.
fifth)
of May 1983) Notary Name.
(nineteen hundred and eighty three).

Stamp.

Stamp. SEAL.
Leg. Prot. fol. No.

APPENDIX E

Carolos A. Montalvan Mora, Legal Director of Empresa Cuban Del Tobacco, (CUBATABCO) addressed at 104 O'Reilly Street, Havana, Cuba, hereby grant power full and sufficient as may be required and necessary by law in favor of Doctor Ernest Schneider, Director of Davidoff Extension S.A. Zug, Switzerland, so that he may use and exercise it with following powers:

---THIRD: That he may in representation of Empresa Cuban del Tabaco (CUBATABCO) subscribe authorizations or proxies on behalf of agents of the Industrial Property, acting in said countries for the defense of the Rights Belonging to CUBATABCO with respect to DAVIDOFF Trademark, with such powers as they may be necessary towards the indicated purposes.

Carlos A. Montalvan Mora.

Havana, February 25, 1982.

THE SEAL OF CUBATABCO DIRECCION

CUBAN DEL TABACO O'Reilly 104 Ciudad de La Habana.
Tel. Cable CURATABCO.

APPENDIX F

NEW YORK POST

Wednesday, November 20, 1985.

PUFF-PUFF

One of the hottest places in town is the world-renowned cigar emporium. Davidoff & Co., at 2 Rue Rive Geneva, Switzerland. Where U.S. journalists and dignitaries are flocking for a rare chance at puffing the Cuban cigars no longer imported to the U.S. For these hoping to bring some of the forbidden Havanas back home, Davidoff salesmen are even quietly offering to replace the identifying bands. According to store manager Bernard Koymans.

NO.

IN THE SUPREME COURT
OF THE UNITED STATES

STEWART S. HOFFMAN

Petitioner

-vs-

DAVIDOFF EXTENSION, S.A.

Respondent

CERTIFICATE OF SERVICE

I, Stewart S. Hoffman representing The Petitioner in this cause, certify:

(1) That I have served one copy of the Petition for Writ of Certiorari on counsel for Respondent, by depositing same in a United States Post Office, with first class postage prepaid, and with the envelope addressed as follows:

Mr. Jack E. Dominik Esq.
Jack E. Dominik, P.A.
Miami Lakes Corporate Plaza
6175 N.W. 153rd Street, Suite 225
Miami, Florida 33014.

(2) The above named party is the only party served.

(3) I further state to the best of my knowledge that the Court's copies of these documents were enclosed in an envelope properly addressed tothe Clerk of this Court, and that said envelope was deposited in a United States Post Office, with express mail postage prepaid on 28th day of January, 1986, which is within the permitted time of filing.

Stewart S. Hoffman

STEWART S. HOFFMAN

SUBSCRIBED AND SWORN TO
before me this 28th day of
January, A.D. 1986.

Edwin R. Berrios, Jr.
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-4796366
Qualified in Queens County
Commission Expires March30, 1986.

NO.

IN THE SUPREME COURT
OF THE UNITED STATES

STEWART S. HOFFMAN

Petitioner

-vs-

DAVIDOFF EXTENSION, SA.

Respondent

CERTIFICATE OF SERVICE

I, Stewart S. Hoffman representing The Petitioner in this cause, certify:

(1) That I have re-served three copies of the Petition for Writ of Certiorari on counsel for Respondent, by depositing same in a United States Post Office, with first class postage prepaid, and with the envelope addressed as follows:

Mr. Jack E. Dominik, Esq.
Jack E. Dominik, P.A.
Miami Lakes Corporate Plaza
6175 N.W. 153rd Street, Suite 225
Miami, Florida 33014.

(2) The above name is not the only party required to be served.

Ms. Marlen Muench
Chief Counsel
The United States Treasury Department
Office For Foreign Assistance Control
1331 G. Street
Washington, D.C. 20220

Mr. Robert Rosenberg
Attorney For The
United States Attorney Generals Office
155 South Miami Avenue
Miami, Florida 33130.

Mr. Hollas (Special Agent)
The United States Treasury Department
Office For Foreign Assistance Control
1331 G. Street
Washinton, D.C. 20220

Mr. Michael O'Riordan (Special Agent)
The United STates Customs Investigation
Office.
155 South Miami Avenue
Miami, Florida 33130.

(3) I further state to the best of my knowledge that the Court's copies of these documents were closed in an envelope properly addressed to the Clerk of this Court, and that said envelope was deposited in a United States Post Office, with express mail postage prepaid on day of February 19, 1986 which is within the permitted time of filing.

Stewart S. Hoffman

SUBSCRIBED and SWORN To
before me this 18th day
of February, A.D. 1986.

Marcia Goldberg
NOTARY PUBLIC

MARCIA GOLDBERG
NOTARY PUBLIC, State of New York
No. 31-4617422
Qualified in [illegible]
Term Expires March 30, 1987

NO.

IN THE SUPREME COURT
OF THF UNITED STATES

STEWART S. HOFFMAN

Petitioner

vs

DAVIDOFF EXTENSION, S.A.

Respondent

APPEARANCE

The Clerk will please enter my appearance as Pro Se. for the Petitioner.

STEWART S. HOFFMAN
Pro Se.
P.O. Box 25222
Tamarac, Florida 33321
1-305-722-1096.
REPRESENTING THE PETITIONER

MR. JACK E. DOMINIK, ESQ.
JACK E. DOMINIK, P.A.
MIAMI LAKES CORPORATE PLAZA
6175 N.W. 153rd Street, Suite 225.
Miami, Florida 33014

OF COUNSEL

The Clerk is further requested to notify pro se. of acting of the Court by means of regular mail.